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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,511	04/14/2004	Maohua Dong	4990.003	6463

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

10/824,511

Applicant(s)

DONG, MAOHUA

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: "outer skirt" is used in conjunction with both "38" and "40" on at least page 7. Appropriate correction is required.

Drawings

2. The drawings were received on November 14, 2005. These drawings are not approved. See below.

3. The proposed corrected drawings are objected to under 37 CFR 1.83(a) because they fail to show the plastic material in the cross sectional views as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Claim 2 is objected to because of the following informalities: in line 10, "for threaded" is misspelled. Appropriate correction is required.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herr (US 4,526,281) in view of Yeager (US 5,207,341).

Herr teaches a reversible child resistant closure system comprising: a container **14** comprising an open top; a cap **10** adapted for mating engagement with the top of said container, said cap including an upper portion defining an axial plug **21** having an outer surface including a non-child resistant engaging means for engaging said container, said cap including a lower portion defining a lower circumferential outer skirt **22** including a child-resistant engaging means for engaging said container; and a resilient insert **49** within said cap, said insert disposed for axially contacting the open top of said container when said cap when said child-resistant engaging means engages said container. (See figures 1-2 for child-resistant mode and figure 7 for non child-resistant mode). Herr does not teach an upper circumferential outer skirt in radially spaced surrounding relation with said plug outer surface on said upper portion.

Yeager teaches a container assembly having a cap **2** including an axial plug **24** having an outer surface including engaging means **10** for engaging said container and a circumferential outer skirt **22** in radially spaced surrounding relation with said plug outer surface.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a circumferential outer skirt in radially spaced surrounding relation with said plug outer surface to the cap of Herr. Doing so provides protection for the threaded portion,

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provides a smooth outer surface on the assembly with the cap in the non child-resistant mode, protects one's hand from scraping against the bayonet structure on the outer surface of the container neck, provides a larger grasping area for removal of the closure from the container, and adds stability to the cap in the non child-resistant mode.

With regard to the limitation of the skirt being concentrically disposed and radially inwardly as set forth in claim 2, it would have been obvious to one having ordinary skill in the art at the time the invention was made to position the wall as desired or deemed necessary, since it has been held that rearranging parts of an invention involves only routine skill in the art.

7. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brennan (US 5,924,588) in view of Yeager.

With reference to figures 2 and 3, Brennan teaches a reversible child resistant closure system comprising: a container **22** comprising an open top; a cap **20** adapted for mating engagement with the top of said container, said cap including an upper portion defining an axial plug **46** having an outer surface including a non-child resistant engaging means **90** for engaging said container, said cap including a lower portion defining a lower circumferential outer skirt including a child-resistant engaging means **60** for engaging said container; and a resilient insert **40** within said cap, said insert disposed for axially contacting the open top of said container when said cap when said child-resistant engaging means engages said container. Yeager does not teach an upper circumferential outer skirt in radially spaced surrounding relation with said plug outer surface on said upper portion.

Yeager teaches a container assembly having a cap **2** including an axial plug **24** having an outer surface including engaging means **10** for engaging said container and a circumferential outer skirt **22** in radially spaced surrounding relation with said plug outer surface.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a circumferential outer skirt in radially spaced surrounding relation with said plug outer surface to the cap of Yeager. Doing so provides protection for the threaded portion, provides a smooth outer surface on the assembly with the cap in the non child-resistant mode, protects one's hand from scraping against the bayonet structure on the outer surface of the container neck, provides a larger grasping area for removal of the closure from the container, and adds stability to the cap in the non child-resistant mode.

Response to Arguments

8. Applicant's arguments filed November 14, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that Yeager is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the closure teaches it is known to provide an outer skirt surrounding the threaded plug portion. Both the closure of the instant invention and the closure of Yeager have a threaded plug surrounded by an additional skirt which protects the threaded portion and provides strength to the container wall at the upper end thereof. In the instant case, the addition of a surrounding skirt protects the cam members of the outer container wall.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a concentrically arranged configuration) are not recited in rejected claim 1. Although the claims

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are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, one of ordinary skill in the art would utilize the teaching of a closure having skirt in a radially spaced and surrounding configuration with an externally threaded plug modify the closure of either Herr or Brennan for the reasoning set forth above.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures. Moore, Barry et al., and Geisinger et al. are all cited for teaching a closure having an externally threaded plug for engaging an internally threaded wall of an associated container and an outer skirt portion for engaging the external surface of the associated container wall.

11. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

12. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH
December 23, 2005



Robin A. Hylton
Primary Examiner
GAU 3727